

JAMES O. EASTLAND, MISS., CHAIRMAN
JOHN L. MCCLELLAN, ARK.
EDWARD M. KENNEDY, MASS.
BIRCH BAYH, IND.
ROBERT C. BYRD, W. VA.
JAMES ABDOUREZK, S. DAK.
JAMES B. ALLEN, ALA.
JOSEPH R. BIDEN, JR., DEL.
JOHN C. CULVER, IOWA
HOWARD M. METZENBAUM, OHIO
DENNIS DE CONCINI, ARIZ.

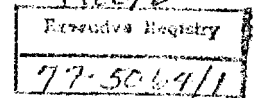
FRANCIS C. ROSENBERGER
CHIEF COUNSEL AND STAFF DIRECTOR

STROM THURMOND, S.C.
WILLIAM L. SCOTT, VA.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
MALCOLM WALLOP, WYO.

SUBCOMMITTEE
JAMES ABDOUREZK, S. DAK., CHAIRMAN
PAUL LAXALT, NEV.
STROM THURMOND, S.C.
IRENE R. MARGOLIS
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
WASHINGTON, D.C. 20510



September 2, 1977

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Admiral Turner:

The Senate Subcommittee on Administrative Practice and Procedure has scheduled public hearings on the Freedom of Information Act for September 15 and 16 and October 6. The hearings will focus generally on experiences under the Act since the extensive 1974 amendments, and particularly on several of the more troublesome provisions of the Act.

On Friday, September 16, the Subcommittee will direct its attention to exemption b(1) of the Act dealing with classified information. As Chairman of the Subcommittee, I would like to invite you or a designee to testify before the Subcommittee on these issues.

The hearing will begin at 10:00 a.m. on September 16 in Room 2228 in the Dirksen Senate Office Building. In accordance with Subcommittee rules, please forward copies of your prepared testimony at least 24 hours prior to the hearing.

If you have any questions about your participation in this hearing please contact Irene Margolis, Chief Counsel of the Subcommittee at 224-5617.

Sincerely,

James Abourezk
Chairman
Subcommittee on Administrative Practice and Procedure

256 2 1 10 11
256 1 10 11

STAT

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

CENTRAL INTELLIGENCE AGENCY

OFFICE OF THE DEPUTY DIRECTOR

"Please keep me currently posted
on your work with SSCI on this
issue. If we have to go, who should
it be? /s/Jack Blake"

ADDCI:JFBlake:kmg (7 Sep 77)

Distribution:

Orig RS - LC w/att

1 - ADDCI w/att

1 - ER

Att: Ltr dtd 2 Sep 77 to DCI fr
James Abourezk, Chmn, Subcom-
mittee on Administrative Practice
and Procedure of Senate re public
hearings on FOIA (ER 77-5064/1)

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		X		
2	DDCI		X		
3	D/DCI/IC				
4	DDS&T				
5	DDI				
6	DDA		X		
7	DDO				
8	D/DCI/NI				
9	GC				
10	LC	X			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20					
21					
22					
SUSPENSE		Date			

Remarks: To 10: Per your comments at today's Morning Meeting, understand you're hoping to handle this through SSCI channels.

D/Executive Secretary
7 Sep 77
Date

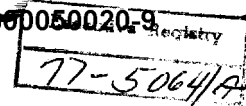
3437 (5-77)

STAT

REGISTRY FILE

Congress

The Director
Central Intelligence Agency



Congress
8 July 77



Washington, D.C. 20505

OLC 77-2831/a

15 AUG 1977

Honorable James Abourezk, Chairman
Subcommittee on Administrative Practice
and Procedure
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for information on this Agency's policies and procedures for processing requests received under the Freedom of Information Act. Our responses to your questionnaire are enclosed, but we would like to make further comments.

Please note that some of the information requested by your Committee is not readily available. We did not begin to record information regarding fee waivers until March 1977. In order to respond fully to these questions, it would be necessary to analyze over 700 case files. This would entail diversion of manpower from processing current FOIA requests and, in view of the heavy demands being made on that office, the decision was made that this should not be done. When possible, however, estimates are provided.

The demands placed on this Agency by the Freedom of Information Act, the Privacy Act and the mandatory review provisions of Executive Order 11652 are great. The equivalent of 100 employees work full-time on requests, appeals and litigation. Manpower costs alone are estimated at \$2,000,000 per year. Only a small portion of these costs are received in fees. During 1976, we collected approximately \$10,000 while in 1975 that amount was less than \$2,000. Search costs tend to be higher, due to the decentralization of the CIA's record systems and the broad scope of the requests tendered to us. The real expense, however, is not the search costs, but rather the cost of reviewing the records once located before possible release. We are precluded by 40 C.F.R. 1900.25(c) from charging for these costs.

Congress

Aside from statutory fee restrictions placed on us, we have adopted a liberal fee waiver policy for requests processed under the FOIA. Neither search nor copying fees are charged to United States citizens or to permanent resident aliens for access to personal records. In addition, no fees are charged for requests pertaining to domestic organizations, provided that the requester is an authorized representative of that organization. The vast majority of requests made to the CIA fall into those categories. We do, however, generally charge review costs on requests dealing with scientific or technological information.

Finally, 5 U.S.C. 552(a)(4)(A) states that an agency shall waive or reduce fees when it determines that the information "can be considered as primarily benefitting the general public." The Act's legislative history, however, provides little guidance as to Congressional intent. Congress should more specifically define this phrase. In the absence of such specificity, the Agency is compelled to waive fees on large numbers of requests which only marginally conform to the statute's language.

It should be apparent, however, that no attempt has been made to dissuade prospective requesters by means of a strict fee policy. If this Agency can be of any further assistance to the Committee in this matter, please do not hesitate to contact me.

Sincerely,

/s/John F. Blake

John F. Blake
Acting Director

Enclosures

Distribution:

Original - Addressee w/encl.
1 - ER w/encl.
1 - Acting DDCI
w/encl.
1 - DCI w/encl.
1 - IPS/DDA w/encl.
1 - OLC Subject w/encl.
1 - OLC Chrono w/o
encl.

2

OLC:DTC/HB:hms (10 Aug 77)

(Answers to the first six questions should be based on 1976 request data.)

1. How many requests for fee waivers did your agency process in 1976?

What percentage of your total FOIA requests in 1976 does this figure represent? (Please include in both answers those cases, where, while the requester did not originally seek a fee waiver, the agency on its own initiative considered the issue.)

2. What was the disposition of these fee waiver requests? (please give numbers rather than percentages of total cases.)

a. Fee waived entirely _____

b. Fee reduced _____

c. Fee waiver denied _____

3. What were the reasons for denying the fee waivers? (If the agency relied exclusively on published regulations or criteria, furnish a copy of those stating how many times each criterion was cited. If other policy reasons were applied informally please list, indicating how many times each was cited.)

4. How many times was the agency's initial decision to deny a fee waiver overturned, in whole or part, at either the administrative or judicial level?

5. How many times did your agency fail to meet the 10-day response deadline because it was processing the fee waiver portion of a request, or was seeking more information from the requester in order to decide if a waiver was justified?

6. Indicate the number of cases in which a requester withdrew a request for information after a fee waiver was denied.

(Answers to the remaining questions should be based on the agency's general experience under the Act since 1974.)

7. Does your agency consider waiving fees without a formal request to do so? If so, describe those circumstances.
8. If a requester can seek a fee waiver at any time other than when filing the original request, please indicate when.
9. Who makes the initial decision on fee waivers? (List names and titles.)
10. Does your agency require a detailed statement of purpose or other information from the requester before a fee waiver determination can be made?
11. Must the requester agree in advance to pay all fees not eventually waived before the request will be deemed "received", even if the total fees or what portion of the total will be waived is not known at that time?
12. What standards, criteria, guidelines and regulations-- formal and informal-- does your agency follow in determining if a fee should be waived or reduced? (include any criteria that were not cited in 1976 and thus are not included in the answer to Question 3.)

13. Does your agency give a requester detailed reasons for denying a fee waiver?
14. Can a requester administratively appeal a fee waiver denial? If so to whom is the appeal directed?
15. Please attach your agency's search and copying fee schedule.
16. Who determines what level employee-- clerical or professional-- is needed to search for documents? (If guidelines exist for determining the level please furnish a copy.)
17. Would your agency favor uniform, government-wide criteria for fee waivers?
18. Would your agency favor a uniform, government-wide schedule for search and copying fees?
19. Would your agency favor an amendment to the Freedom of Information Act allowing agencies to charge fees for reviewing documents and for overhead costs in certain situations? If so, under what circumstances?
20. Does your agency have any legislative or administrative recommendations for changing the fee waiver provisions of the Act, or for changing the way in which the existing provisions are applied and utilized to insure conformance with Congressional intent?

(If any one document or set of regulations provides the answer to more than one of the questions, please forward one copy of that document and indicate by the appropriate question where the response can be found.)

ANSWERS TO FEE WAIVER QUESTIONNAIRE

Answer #1 - This information is unavailable. Most request letters are variations of a form letter first distributed by the ACLU which included a fee waiver request. We would estimate that about 70 percent of the FOIA requests received during 1976 contained a request that fees be waived.

Answer #2 - This information is unavailable.

Answer #3 - A policy paper is enclosed. (Enclosure A).

Answer #4 - This information is unavailable. There have been instances, however, of initial fee waiver denials being overruled upon administrative appeal. There has been only one case in which the courts have overturned a refusal by the CIA to waive fees, and this involved a request received in 1974, rather than 1976. In Fitzgibbon v. CIA et al., the court found no evidence that the Agency had considered whether release of the information

STAT
STAT
[redacted] would benefit the general public. Accordingly, the court ruled that it was in the public interest that fees be waived.

Answer #5 - This information is unavailable. Because of the size of our request backlog, it is seldom possible to respond to FOIA requests within 10 working days, whether fees are an issue or not. Our current policy is to defer processing FOIA requests until the requester provides written assurance of his willingness to pay all charges incurred in processing his request. The 10-day period does not start until this assurance is in hand.

Answer #6 - One 1976 FOIA request was withdrawn by the requester because of the sum of money involved. It is not known whether he had requested a waiver. A large number of other FOIA requesters, however, in effect withdrew their requests by failing to answer letters either asking for a fee deposit or asking for payment in advance for copies of records offered to them. It is Agency policy to cancel such requests once 90 days have elapsed without an answer. Sixty-three 1976 FOIA requests were cancelled because of fees. Information is unavailable as to how many of the 63 requests included a fee waiver application.

Answer #7 - Yes. An authorized representative of a domestic organization who is requesting information pertaining to that organization is not charged fees, whether he has requested a waiver or not. Fees are never charged for requests from United States citizens or permanent resident aliens for their personal records. Sometimes fees are waived simply because no relevant records are uncovered by our searches. In general, the possibility that fees should be waived is always taken into consideration regardless of the language of the request letter.

Answer #8 - Normally the question of fees is resolved before the records search is undertaken. We have considered waivers at various stages up until the actual release of documents, but we are understandably reluctant to commit resources to processing a request if there is any doubt as to the requester's willingness to pay for the services.

Answer #9 - Gene F. Wilson, Information and Privacy Coordinator.

Answer #10 - Generally not. However, it is sometimes necessary to ask individuals who are requesting records on United States domestic organizations whether they are authorized to represent those organizations.

Answer #11 - We have recently adopted this policy after having experienced several cases of requesters reneging on fees. We would not do this, however, with a requester who has established a record of always paying all charges assessed him. If the requester desires, we will obtain an estimate of search costs for him. If search costs will be considerable, we may demand a deposit before processing is commenced.

Answer #12 - See Enclosure A.

Answer #13 - No.

Answer #14 - Yes. Fee waiver appeals are sent to the Executive Secretary, CIA Information Review Committee, for resolution. At his discretion, he may consult with other authorities before making a determination.

Answer #15 - See Enclosure B.

Answer #16 - This is determined by the record-holding components.

Answer #17 - Yes.

Answer #18 - Yes, but this may not be feasible. Only direct costs are to be recovered, yet there are disparities between agencies with respect to average hourly wage rates, computer costs, etc.

Answer #19 - Emphatically yes! Foreign intelligence records require a very careful review by experienced personnel. This review is much more costly than searching for and copying documents. We recommend also that fees be charged for the time spent in preparing sanitized versions of documents being released to requesters. Under the present system, the United States taxpayer is heavily subsidizing a relatively small number of "professional" FOIA requesters. If they were required to pay for the actual time required to process their requests, these requesters would be forced to be more specific in describing the records sought, instead of requesting "all" records pertaining to broad subject areas.

Answer #20 - Perhaps the greatest need is for better guidance in determining when it is in the public interest to release information.

POLICY AND PROCEDURES FOR WAIVER OR REDUCTION OF FOIA FEES

1. As specified in the Freedom of Information Act, documents should be furnished without charge or at a reduced rate where the Agency determines it is in the public interest because the furnishing of the information can be considered as primarily benefiting the general public.

2. Where the requester has asked for a waiver of fees or where it is perceived there is cause to believe that the released information can be considered as "primarily benefiting the general public," the Information and Privacy Coordinator may exercise Agency discretion under the Act and waive or reduce the search fees and/or reproduction costs. The Coordinator may call upon special expertise and knowledge concerning the request, considering such factors as numbers of the public to be benefited, the significance of the benefit, the usefulness of the material to be released, the likelihood that tangible public good would result from its release, and other factors which are relevant to making a determination of the public interest.

3. In cases where the fee has not been waived or reduced by the Coordinator and the requester has appealed this decision, such appeals will be referred to the next higher administrative

echelon for review and determination. This reviewing official, normally the Executive Secretary/IRC, will review the factors in the case and may make a final determination or refer the request to the Chairman/IRC for determination.

4. To provide guidance in making such determinations, the following are examples of situations or circumstances where a reduction or a waiver would or would not apply.

a. Waiver or reduction would normally be approved:

- Where the information released would benefit the general public because it relates to a specific subject matter (e.g., the Oswald file) of widespread public interest.

- Where the information released would be of major or intrinsic historical interest.

- Where the information released provides to the general public a new insight into government research and functions that would be of interest to the general public (e.g., climatological studies).

- Where the information requested would be available under the access provisions of the Privacy Act, such as information about oneself concerning a U.S. citizen or permanent resident alien.

- Where requests concern information collected on U.S. domestic organizations, and where the requester is acting as an official representative of that organization.

- Where the total search and reproduction fees are less than \$4, or where the expenses involved in collecting and

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9
transferring the fees would exceed the value of the fees collected.

b. Where fee waivers would not normally be applicable:

- Where the information is already in the public sector in other forms, or would be duplicated, and the additional release of Agency information would not significantly alter that information already available to the public.

- Where the nature of the request is inherent in a personal interest of the requester and would not contribute significantly to the understanding of overall history or public policy (e.g., request for a specific minor OSS operation).

- Where the search for information is not expected to produce any information of significant interest to the general public.

- Where there is no reason after preliminary search to believe that the Agency's files would contain any information relevant to the request.

- Where the request is for information to be used in a student research project which would not be of major interest to the general public.

Fees for Records Services

(a) Search and duplication fees shall be charged according to the schedule set out in paragraph (c) of this section for services rendered in responding to requests for Agency records under this part. Records shall be furnished without charge or at a reduced rate whenever the Coordinator determines that waiver or reduction of the charge is in the public interest because furnishing the information can be considered as primarily benefiting the general public. The Coordinator also may waive or reduce the charge whenever he determines that the interest of the government would be served thereby. Fees shall not be charged where they would amount, in the aggregate, for a request, or a series of related requests, to less than \$4.

(b) Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or of such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to confer with the Coordinator in an attempt to revise the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Agency until a reply is received from the requester.

(c) The schedule of fees for services performed in responding to requests for Agency records is established as follows:

(1) For each one quarter hour spent by clerical personnel in searching for a record, \$1;

(2) For each one quarter hour spent by professional personnel in searching for a record, \$2;

(3) For computer search, \$55;

(4) For copies of paper documents in sizes not larger than 8 1/2 x 14 inches, \$0.10 per copy of each page, and

(5) For duplication of non-paper media or any document that cannot be reproduced on a standard office copier actual direct cost.

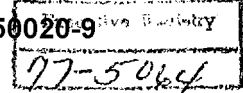
JAMES O. EASTLAND, MISS., CHAIRMAN

JOHN L. MCCLELLAN, ARK.
EDWARD M. KENNEDY, MASS.
BIRCH BAYH, IND.
ROBERT C. BYRD, W. VA.
JAMES ABDOUREZK, S. DAK.
JAMES B. ALLEN, ALA.
JOSEPH R. BIDEN, JR., DEL.
JOHN C. CULVER, IOWA
HOWARD M. METZENBAUM, OHIO
DENNIS DE CONCINI, ARIZ.

STROM THURMOND, S.C.
CHARLES MCC. MATHIAS, JR., MD.
WILLIAM L. SCOTT, VA.
PAUL LAXALT, NEV.
ORRIN G. HATCH, UTAH
MALCOLM WALLOP, WYO.

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510



FRANCIS C. ROSENBERGER
CHIEF COUNSEL AND STAFF DIRECTOR

July 8, 1977

The Honorable Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Admiral Turner:

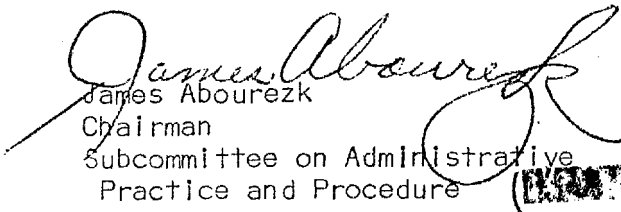
The Senate Subcommittee on Administrative Practice and Procedure is responsible for continual oversight of the implementation of the Freedom of Information Act. The subcommittee currently is conducting a detailed investigation into agency procedures for exercising their discretionary authority under the Act to waive fees.

In that regard, the subcommittee would like to review specific fee waiver procedures, regulations and data for various federal agencies. On behalf of the subcommittee I would appreciate it if your agency would complete the attached questionnaire and return it to the subcommittee office at 162 Russell Senate Office Building by August 1.

If you have any questions regarding this request please feel free to contact me or have a member of your staff contact Diana Huffman at the subcommittee, 224-5617.

Thank you for your cooperation in this matter.

Sincerely,


James Abourezk
Chairman
Subcommittee on Administrative
Practice and Procedure

Enclosure

(EX-101) THE REGISTRY FILE

Congress

QUESTIONNAIRE

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

(Answers to the first six questions should be based on 1976 request data.)

1. How many requests for fee waivers did your agency process in 1976?
What percentage of your total FOIA requests in 1976 does this figure represent? (Please include in both answers those cases, where, while the requester did not originally seek a fee waiver, the agency on its own initiative considered the issue.)
2. What was the disposition of these fee waiver requests? (please give numbers rather than percentages of total cases.)
 - a. Fee waived entirely _____
 - b. Fee reduced _____
 - c. Fee waiver denied _____
3. What were the reasons for denying the fee waivers? (If the agency relied exclusively on published regulations or criteria, furnish a copy of those stating how many times each criterion was cited. If other policy reasons were applied informally please list, indicating how many times each was cited.)
4. How many times was the agency's initial decision to deny a fee waiver overturned, in whole or part, at either the administrative or judicial level?
5. How many times did your agency fail to meet the 10-day response deadline because it was processing the fee waiver portion of a request, or was seeking more information from the requester in order to decide if a waiver was justified?

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

6. Indicate the number of cases in which a requester withdrew a request for information after a fee waiver was denied.

(Answers to the remaining questions should be based on the agency's general experience under the Act since 1974.)

7. Does your agency consider waiving fees without a formal request to do so? If so, describe those circumstances.
8. If a requester can seek a fee waiver at any time other than when filing the original request, please indicate when.
9. Who makes the initial decision on fee waivers? (List names and titles.)
10. Does your agency require a detailed statement of purpose or other information from the requester before a fee waiver determination can be made?
11. Must the requester agree in advance to pay all fees not eventually waived before the request will be deemed "received", even if the total fees or what portion of the total will be waived is not known at that time?
12. What standards, criteria, guidelines and regulations-- formal and informal-- does your agency follow in determining if a fee should be waived or reduced? (include any criteria that were not cited in 1976 and thus are not included in the answer to Question 3.)

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

13. Does your agency give a requester detailed reasons for denying a fee waiver?
14. Can a requester administratively appeal a fee waiver denial? If so to whom is the appeal directed?
15. Please attach your agency's search and copying fee schedule.
16. Who determines what level employee-- clerical or professional-- is needed to search for documents? (If guidelines exist for determining the level please furnish a copy.)
17. Would your agency favor uniform, government-wide criteria for fee waivers?
18. Would your agency favor a uniform, government-wide schedule for search and copying fees?
19. Would your agency favor an amendment to the Freedom of Information Act allowing agencies to charge fees for reviewing documents and for overhead costs in certain situations? If so, under what circumstances?
20. Does your agency have any legislative or administrative recommendations for changing the fee waiver provisions of the Act, or for changing the way in which the existing provisions are applied and utilized to insure conformance with Congressional intent?

(If any one document or set of regulations provides the answer to more than one of the questions, please forward one copy of that document and indicate by appropriate question where the response can be found.)

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

	UNCLASSIFIED		CONFIDENTIAL		SECRET
--	--------------	--	--------------	--	--------

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9

EXECUTIVE SECRETARIAT

Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	D/DCI/IC				
4	DDS&T				
5	DDI				
6	DDA		✓		
7	DDO				
8	D/DCI/NI				
9	GC				
10	LC	✓			
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	A/DCI/PA				
17	AO/DCI				
18	C/IPS		✓		
19	DCI/SS				
20					
21					
22					
SUSPENSE		Date			

Remarks:

STAT

Approved For Release 2004/03/12 : CIA-RDP80M00165A001800050020-9